

FIRST REGULAR SESSION

HOUSE BILL NO. 609

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LIPKE, GOODMAN AND STEVENSON (Co-sponsors).

Read 1st time March 5, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1935L.011

AN ACT

To repeal sections 302.060, 302.309, 302.321, 302.541, 577.023, and 577.500, RSMo, and to enact in lieu thereof six new sections relating to driving while intoxicated, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 302.060, 302.309, 302.321, 302.541, 577.023, and 577.500, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 302.060, 302.309, 302.321, 302.541, 577.023, and 577.500, to read as follows:

302.060. The director shall not issue any license and shall immediately deny any driving privilege:

(1) To any person who is under the age of eighteen years, if such person operates a motor vehicle in the transportation of persons or property as classified in section 302.015;

(2) To any person who is under the age of sixteen years, except as hereinafter provided;

(3) To any person whose license has been suspended, during such suspension, or to any person whose license has been revoked, until the expiration of one year after such license was revoked;

(4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;

(5) To any person who has previously been adjudged to be incapacitated and who at the time of application has not been restored to partial capacity;

(6) To any person who, when required by this law to take an examination, has failed to pass such examination;

(7) To any person who has an unsatisfied judgment against such person, as defined in

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

15 chapter 303, RSMo, until such judgment has been satisfied or the financial responsibility of such
16 person, as defined in section 303.120, RSMo, has been established;

17 (8) To any person whose application shows that the person has been convicted within
18 one year prior to such application of violating the laws of this state relating to failure to stop after
19 an accident and to disclose the person's identity or driving a motor vehicle without the owner's
20 consent;

21 (9) To any person who has been convicted more than twice of violating state law, or a
22 county or municipal ordinance where [the judge in such cases was an attorney and] the defendant
23 was represented by or waived the right to an attorney in writing, relating to driving while
24 intoxicated; except that, after the expiration of ten years from the date of conviction of the last
25 offense of violating such law or ordinance relating to driving while intoxicated, a person who
26 was so convicted may petition the circuit court of the county in which such last conviction was
27 rendered and the court shall review the person's habits and conduct since such conviction. If the
28 court finds that the petitioner has not been convicted of any offense related to alcohol, controlled
29 substances or drugs during the preceding ten years and that the petitioner's habits and conduct
30 show such petitioner to no longer pose a threat to the public safety of this state, the court may
31 order the director to issue a license to the petitioner if the petitioner is otherwise qualified
32 pursuant to the provisions of sections 302.010 to 302.540. No person may obtain a license
33 pursuant to the provisions of this subdivision through court action more than one time;

34 (10) To any person who has been convicted twice within a five-year period of violating
35 state law, or a county or municipal ordinance where [the judge in such cases was an attorney and]
36 the defendant was represented by or waived the right to an attorney in writing, of driving while
37 intoxicated, or who has been convicted of the crime of involuntary manslaughter while operating
38 a motor vehicle in an intoxicated condition. The director shall not issue a license to such person
39 for five years from the date such person was convicted for involuntary manslaughter while
40 operating a motor vehicle in an intoxicated condition or for driving while intoxicated for the
41 second time. Any person who has been denied a license for two convictions of driving while
42 intoxicated prior to July 27, 1989, shall have the person's license issued, upon application, unless
43 the two convictions occurred within a five-year period, in which case, no license shall be issued
44 to the person for five years from the date of the second conviction;

45 (11) To any person who is otherwise disqualified pursuant to the provisions of sections
46 302.010 to 302.780, chapter 303, RSMo, or section 544.046, RSMo;

47 (12) To any person who is under the age of eighteen years, if such person's parents or
48 legal guardians file a certified document with the department of revenue stating that the director
49 shall not issue such person a driver's license. Each document filed by the person's parents or
50 legal guardians shall be made upon a form furnished by the director and shall include identifying

51 information of the person for whom the parents or legal guardians are denying the driver's
52 license. The document shall also contain identifying information of the person's parents or legal
53 guardians. The document shall be certified by the parents or legal guardians to be true and
54 correct. This provision shall not apply to any person who is legally emancipated. The parents
55 or legal guardians may later file an additional document with the department of revenue which
56 reinstates the person's ability to receive a driver's license.

302.309. 1. Whenever any license is suspended pursuant to sections 302.302 to 302.309,
2 the director of revenue shall return the license to the operator immediately upon the termination
3 of the period of suspension and upon compliance with the requirements of chapter 303, RSMo.

4 2. Any operator whose license is revoked pursuant to these sections, upon the
5 termination of the period of revocation, shall apply for a new license in the manner prescribed
6 by law.

7 3. (1) All circuit courts or the director of revenue shall have jurisdiction to hear
8 applications and make eligibility determinations granting limited driving privileges. Any
9 application may be made in writing to the director of revenue and the person's reasons for
10 requesting the limited driving privilege shall be made therein.

11 (2) When any court of record having jurisdiction or the director of revenue finds that an
12 operator is required to operate a motor vehicle in connection with any of the following:

- 13 (a) A business, occupation, or employment;
- 14 (b) Seeking medical treatment for such operator;
- 15 (c) Attending school or other institution of higher education;
- 16 (d) Attending alcohol or drug treatment programs; or
- 17 (e) Any other circumstance the court or director finds would create an undue hardship
18 on the operator; the court or director may grant such limited driving privilege as the
19 circumstances of the case justify if the court or director finds undue hardship would result to the
20 individual, and while so operating a motor vehicle within the restrictions and limitations of the
21 limited driving privilege the driver shall not be guilty of operating a motor vehicle without a
22 valid license.

23 (3) An operator may make application to the proper court in the county in which such
24 operator resides or in the county in which is located the operator's principal place of business or
25 employment. Any application for a limited driving privilege made to a circuit court shall name
26 the director as a party defendant and shall be served upon the director prior to the grant of any
27 limited privilege, and shall be accompanied by a copy of the applicant's driving record as
28 certified by the director. Any applicant for a limited driving privilege shall have on file with the
29 department of revenue proof of financial responsibility as required by chapter 303, RSMo. Any
30 application by a person who transports persons or property as classified in section 302.015 may

31 be accompanied by proof of financial responsibility as required by chapter 303, RSMo, but if
32 proof of financial responsibility does not accompany the application, or if the applicant does not
33 have on file with the department of revenue proof of financial responsibility, the court or the
34 director has discretion to grant the limited driving privilege to the person solely for the purpose
35 of operating a vehicle whose owner has complied with chapter 303, RSMo, for that vehicle, and
36 the limited driving privilege must state such restriction. When operating such vehicle under such
37 restriction the person shall carry proof that the owner has complied with chapter 303, RSMo, for
38 that vehicle.

39 (4) The court order or the director's grant of the limited driving privilege shall indicate
40 the termination date of the privilege, which shall be not later than the end of the period of
41 suspension or revocation. A copy of any court order shall be sent by the clerk of the court to the
42 director, and a copy shall be given to the driver which shall be carried by the driver whenever
43 such driver operates a motor vehicle. The director of revenue upon granting a limited driving
44 privilege shall give a copy of the limited driving privilege to the applicant. The applicant shall
45 carry a copy of the limited driving privilege while operating a motor vehicle. A conviction
46 which results in the assessment of points pursuant to section 302.302, other than a violation of
47 a municipal stop sign ordinance where no accident is involved, against a driver who is operating
48 a vehicle pursuant to a limited driving privilege terminates the privilege, as of the date the points
49 are assessed to the person's driving record. If the date of arrest is prior to the issuance of the
50 limited driving privilege, the privilege shall not be terminated. The director shall notify by
51 ordinary mail the driver whose privilege is so terminated.

52 (5) Except as provided in subdivision (6) of this subsection, no person is eligible to
53 receive a limited driving privilege who at the time of application for a limited driving privilege
54 has previously been granted such a privilege within the immediately preceding five years, or
55 whose license has been suspended or revoked for the following reasons:

56 (a) A conviction of violating the provisions of section 577.010 or 577.012, RSMo, or any
57 similar provision of any federal or state law, or a municipal or county law where [the judge in
58 such case was an attorney and] the defendant was represented by or waived the right to an
59 attorney in writing, until the person has completed the first thirty days of a suspension or
60 revocation imposed pursuant to this chapter;

61 (b) A conviction of any felony in the commission of which a motor vehicle was used;

62 (c) Ineligibility for a license because of the provisions of subdivision (1), (2), (4), (5),
63 (6), (7), (8), (9), (10) or (11) of section 302.060;

64 (d) Because of operating a motor vehicle under the influence of narcotic drugs, a
65 controlled substance as defined in chapter 195, RSMo, or having left the scene of an accident as
66 provided in section 577.060, RSMo;

67 (e) Due to a revocation for the first time for failure to submit to a chemical test pursuant
68 to section 577.041, RSMo, or due to a refusal to submit to a chemical test in any other state, if
69 such person has not completed the first ninety days of such revocation;

70 (f) Violation more than once of the provisions of section 577.041, RSMo, or a similar
71 implied consent law of any other state;

72 (g) Disqualification of a commercial driver's license pursuant to sections 302.700 to
73 302.780, however, nothing in this subsection shall prevent a person holding a commercial
74 driver's license who is suspended or revoked as a result of an action occurring while not driving
75 a commercial motor vehicle or driving for pay, but while driving in an individual capacity as an
76 operator of a personal vehicle from applying for a limited driving privilege to operate a
77 commercial vehicle, if otherwise eligible for such limited privilege; or

78 (h) Due to a suspension pursuant to subsection 2 of section 302.525 and who has not
79 completed the first thirty days of such suspension, provided the person is not otherwise ineligible
80 for a limited driving privilege; or due to a revocation pursuant to subsection 2 of section 302.525
81 if such person has not completed such revocation.

82 (6) (a) Provided that pursuant to the provisions of this section, the applicant is not
83 otherwise ineligible for a limited driving privilege, a circuit court or the director may, in the
84 manner prescribed in this subsection, allow a person who has had such person's license to operate
85 a motor vehicle revoked where that person cannot obtain a new license for a period of ten years,
86 as prescribed in subdivision (9) of section 302.060, to apply for a limited driving privilege
87 pursuant to this subsection if such person has served at least three years of such disqualification
88 or revocation. Such person shall present evidence satisfactory to the court or the director that
89 such person has not been convicted of any offense related to alcohol, controlled substances or
90 drugs during the preceding three years and that the person's habits and conduct show that the
91 person no longer poses a threat to the public safety of this state.

92 (b) Provided that pursuant to the provisions of this section, the applicant is not otherwise
93 ineligible for a limited driving privilege or convicted of involuntary manslaughter while
94 operating a motor vehicle in an intoxicated condition, a circuit court or the director may, in the
95 manner prescribed in this subsection, allow a person who has had such person's license to operate
96 a motor vehicle revoked where that person cannot obtain a new license for a period of five years
97 because of two convictions of driving while intoxicated, as prescribed in subdivision (10) of
98 section 302.060, to apply for a limited driving privilege pursuant to this subsection if such person
99 has served at least two years of such disqualification or revocation. Such person shall present
100 evidence satisfactory to the court or the director that such person has not been convicted of any
101 offense related to alcohol, controlled substances or drugs during the preceding two years and that
102 the person's habits and conduct show that the person no longer poses a threat to the public safety

103 of this state. Any person who is denied a license permanently in this state because of an
104 alcohol-related conviction subsequent to a restoration of such person's driving privileges
105 pursuant to subdivision (9) of section 302.060 shall not be eligible for limited driving privilege
106 pursuant to the provisions of this subdivision.

107 4. Any person who has received notice of denial of a request of limited driving privilege
108 by the director of revenue may make a request for a review of the director's determination in the
109 circuit court of the county in which the person resides or the county in which is located the
110 person's principal place of business or employment within thirty days of the date of mailing of
111 the notice of denial. Such review shall be based upon the records of the department of revenue
112 and other competent evidence and shall be limited to a review of whether the applicant was
113 statutorily entitled to the limited driving privilege.

114 5. The director of revenue shall promulgate rules and regulations necessary to carry out
115 the provisions of this section. Any rule or portion of a rule, as that term is defined in section
116 536.010, RSMo, that is created under the authority delegated in this section shall become
117 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,
118 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
119 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,
120 RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently
121 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
122 after August 28, 2001, shall be invalid and void.

302.321. 1. A person commits the crime of driving while revoked if [he] **such person**
2 operates a motor vehicle on a highway when [his] **such person's** license or driving privilege has
3 been canceled, suspended or revoked under the laws of this state or any other state and acts with
4 criminal negligence with respect to knowledge of the fact that [his] **such person's** driving
5 privilege has been canceled, suspended or revoked.

6 2. Any person convicted of driving while revoked is guilty of a class A misdemeanor.
7 Any person with no prior alcohol-related enforcement contacts as defined in section 302.525,
8 convicted a fourth or subsequent time of driving while revoked or a county or municipal
9 ordinance of driving while suspended or revoked where [the judge in such case was an attorney
10 and] the defendant was represented by or waived the right to an attorney in writing, and where
11 the prior three driving-while-revoked offenses occurred within ten years of the date of occurrence
12 of the present offense and where the person received and served a sentence of ten days or more
13 on such previous offenses; and any person with a prior alcohol-related enforcement contact as
14 defined in section 302.525, convicted a third or subsequent time of driving while revoked or a
15 county or municipal ordinance of driving while suspended or revoked where [the judge in such
16 case was an attorney and] the defendant was represented by or waived the right to an attorney in

17 writing, and where the prior two driving-while-revoked offenses occurred within ten years of the
18 date of occurrence of the present offense and where the person received and served a sentence
19 of ten days or more on such previous offenses is guilty of a class D felony. No court shall
20 suspend the imposition of sentence as to such a person nor sentence such person to pay a fine in
21 lieu of a term of imprisonment, nor shall such person be eligible for parole or probation until [he]
22 **such person** has served a minimum of forty-eight consecutive hours of imprisonment, unless as
23 a condition of such parole or probation, such person performs at least ten days involving at least
24 forty hours of community service under the supervision of the court in those jurisdictions which
25 have a recognized program for community service. Driving while revoked is a class D felony
26 on the second or subsequent conviction pursuant to section 577.010, RSMo, or a fourth or
27 subsequent conviction for any other offense.

302.541. 1. In addition to other fees required by law, any person who has had a license
2 to operate a motor vehicle suspended or revoked following a determination, pursuant to section
3 302.505, or section 577.010, 577.012, 577.041 or 577.510, RSMo, or any county or municipal
4 ordinance, where [the judge in such case was an attorney and] the defendant was represented by
5 or waived the right to an attorney, that such person was driving while intoxicated or with a blood
6 alcohol content of eight-hundredths of one percent or more by weight or, where such person was
7 at the time of the arrest less than twenty-one years of age and was driving with a blood alcohol
8 content of two-hundredths of one percent or more by weight, shall pay an additional fee of
9 twenty-five dollars prior to the reinstatement or reissuance of the license.

10 2. Any person less than twenty-one years of age whose driving privilege has been
11 suspended or revoked solely for a first determination pursuant to sections 302.500 to 302.540
12 that such person was driving a motor vehicle with two-hundredths of one percent or more blood
13 alcohol content is exempt from filing proof of financial responsibility with the department of
14 revenue in accordance with chapter 303, RSMo, as a prerequisite for reinstatement of driving
15 privileges or obtaining a restricted driving privilege as provided by section 302.525.

577.023. 1. For purposes of this section, unless the context clearly indicates otherwise:
2 (1) An "intoxication-related traffic offense" is driving while intoxicated, driving with
3 excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) of
4 subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4)
5 of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second
6 degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo, or driving under
7 the influence of alcohol or drugs in violation of state law or a county or municipal ordinance,
8 where [the judge in such case was an attorney and] the defendant was represented by or waived
9 the right to an attorney in writing;
10 (2) A "persistent offender" is one of the following:

11 (a) A person who has pleaded guilty to or has been found guilty of two or more
12 intoxication-related traffic offenses, where such two or more offenses occurred within ten years
13 of the occurrence of the intoxication-related traffic offense for which the person is charged;

14 (b) A person who has pleaded guilty to or has been found guilty of involuntary
15 manslaughter pursuant to subsection 1 of section 565.024, RSMo, assault in the second degree
16 pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law
17 enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section
18 565.082, RSMo; and

19 (3) A "prior offender" is a person who has pleaded guilty to or has been found guilty of
20 one intoxication-related traffic offense, where such prior offense occurred within five years of
21 the occurrence of the intoxication-related traffic offense for which the person is charged.

22 2. Any person who pleads guilty to or is found guilty of a violation of section 577.010
23 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A
24 misdemeanor.

25 3. Any person who pleads guilty to or is found guilty of a violation of section 577.010
26 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D
27 felony.

28 4. No court shall suspend the imposition of sentence as to a prior or persistent offender
29 under this section nor sentence such person to pay a fine in lieu of a term of imprisonment,
30 section 557.011, RSMo, to the contrary notwithstanding. No prior offender shall be eligible for
31 parole or probation until he has served a minimum of five days imprisonment, unless as a
32 condition of such parole or probation such person performs at least thirty days of community
33 service under the supervision of the court in those jurisdictions which have a recognized program
34 for community service. No persistent offender shall be eligible for parole or probation until he
35 or she has served a minimum of ten days imprisonment, unless as a condition of such parole or
36 probation such person performs at least sixty days of community service under the supervision
37 of the court.

38 5. The court shall find the defendant to be a prior offender or persistent offender, if:

39 (1) The indictment or information, original or amended, or the information in lieu of an
40 indictment pleads all essential facts warranting a finding that the defendant is a prior offender
41 or persistent offender; and

42 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding
43 beyond a reasonable doubt the defendant is a prior offender or persistent offender; and

44 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt
45 by the court that the defendant is a prior offender or persistent offender.

46 6. In a jury trial, the facts shall be pleaded, established and found prior to submission to

47 the jury outside of its hearing.

48 7. In a trial without a jury or upon a plea of guilty, the court may defer the proof in
49 findings of such facts to a later time, but prior to sentencing.

50 8. The defendant shall be accorded full rights of confrontation and cross-examination,
51 with the opportunity to present evidence, at such hearings.

52 9. The defendant may waive proof of the facts alleged.

53 10. Nothing in this section shall prevent the use of presentence investigations or
54 commitments.

55 11. At the sentencing hearing both the state and the defendant shall be permitted to
56 present additional information bearing on the issue of sentence.

57 12. The pleas or findings of guilty shall be prior to the date of commission of the present
58 offense.

59 13. The court shall not instruct the jury as to the range of punishment or allow the jury,
60 upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of
61 prior offenders or persistent offenders.

62 14. Evidence of prior convictions shall be heard and determined by the trial court out of
63 the hearing of the jury prior to the submission of the case to the jury, and shall include but not
64 be limited to evidence of convictions received by a search of the records of the Missouri uniform
65 law enforcement system maintained by the Missouri state highway patrol. After hearing the
66 evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal
67 or county ordinance in a county or municipal court for driving while intoxicated or a conviction
68 or a plea of guilty or a finding of guilty followed by a suspended imposition of sentence,
69 suspended execution of sentence, probation or parole or any combination thereof in a state court
70 shall be treated as a prior conviction.

577.500. 1. A court of competent jurisdiction shall, upon a plea of guilty, conviction or
2 finding of guilt, or, if the court is a juvenile court, upon a finding of fact that the offense was
3 committed by a juvenile, enter an order suspending or revoking the driving privileges of any
4 person determined to have committed one of the following offenses and who, at the time said
5 offense was committed, was under twenty-one years of age:

6 (1) Any alcohol related traffic offense in violation of state law or a county or, beginning
7 July 1, 1992, municipal ordinance, where [the judge in such case was an attorney and] the
8 defendant was represented by or waived the right to an attorney in writing;

9 (2) Any offense in violation of state law or, beginning July 1, 1992, a county or
10 municipal ordinance, where [the judge in such case was an attorney and] the defendant was
11 represented by or waived the right to an attorney in writing, involving the possession or use of
12 alcohol, committed while operating a motor vehicle;

13 (3) Any offense involving the possession or use of a controlled substance as defined in
14 chapter 195, RSMo, in violation of the state law or, beginning July 1, 1992, a county or
15 municipal ordinance, where [the judge in such case was an attorney and] the defendant was
16 represented by or waived the right to an attorney in writing;

17 (4) Any offense involving the alteration, modification or misrepresentation of a license
18 to operate a motor vehicle in violation of section 311.328, RSMo;

19 (5) Any offense in violation of state law or, beginning July 1, 1992, a county or
20 municipal ordinance, where [the judge in such case was an attorney and] the defendant was
21 represented by or waived the right to an attorney in writing, involving the possession or use of
22 alcohol for a second time; except that a determination of guilt or its equivalent shall have been
23 made for the first offense and both offenses shall have been committed by the person when the
24 person was under eighteen years of age.

25 2. The court shall require the surrender to it of any license to operate a motor vehicle
26 then held by any person against whom a court has entered an order suspending or revoking
27 driving privileges under subsection 1 of this section.

28 3. The court, if other than a juvenile court, shall forward to the director of revenue the
29 order of suspension or revocation of driving privileges and any licenses acquired under
30 subsection 2 of this section.

31 4. (1) The court, if a juvenile court, shall forward to the director of revenue the order
32 of suspension or revocation of driving privileges and any licenses acquired under subsection 2
33 of this section for any person sixteen years of age or older, the provision of chapter 211, RSMo,
34 to the contrary notwithstanding.

35 (2) The court, if a juvenile court, shall hold the order of suspension or revocation of
36 driving privileges for any person less than sixteen years of age until thirty days before the
37 person's sixteenth birthday, at which time the juvenile court shall forward to the director of
38 revenue the order of suspension or revocation of driving privileges, the provision of chapter 211,
39 RSMo, to the contrary notwithstanding.

40 5. The period of suspension for a first offense under this section shall be ninety days.
41 Any second or subsequent offense under this section shall result in revocation of the offender's
42 driving privileges for one year.